

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1534

INTRODUCER: Senator Brandes

SUBJECT: Disposition of Liens and Forfeited Property

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1534 amends s. 932.7055, F.S., by revising the authorized distribution and use of contraband forfeiture funds under the Florida Contraband Forfeiture Act (the act) as follows:

It prohibits a seizing agency from retaining the forfeited property for the agency's use.

It requires the seizing agency to deposit into the Crimes Compensation Trust Fund (trust fund) the forfeiture proceeds which remain after all liens and debts are paid as follows:

- All remaining proceeds, if it is a state agency; or
- Fifty percent of remaining proceeds, if it is a local law enforcement agency.

(Currently a seizing agency can retain these proceeds.)

Additionally, the bill provides that forfeiture proceeds retained by a local law enforcement agency can only be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs.

The bill also requires any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year to expend or donate 50 percent of the proceeds in excess of \$15,000 for these designated programs (currently a minimum of 15 percent is required).

The bill will have a significant fiscal impact on local law enforcement agencies and some state agencies with law enforcement functions.

This bill has an effective date of July 1, 2015.

II. Present Situation:

The Contraband Forfeiture Act (act), ss. 932.701-932.706, F.S., prescribes procedures for law enforcement agencies to follow when seizing, forfeiting, and disposing of property under the act. Currently, under s. 932.703, F.S., any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the act.¹

Section 932.704, F.S., requires the Department of Law Enforcement (FDLE), in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, to develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the act. Each agency that seizes property shall periodically review its seizures, settlements, and forfeiture proceedings to determine whether they comply with the act and the adopted guidelines. The determination of whether an agency will file a forfeiture action must be the sole responsibility of the head of the agency or his or her designee. The determination of whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible.²

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.³

If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.⁴

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.⁵

¹ Section 932.703(1), F.S. The constitutionality of the act was upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991).

² Section 932.704(11), F.S.

³ Section 932.7055(1), F.S.

⁴ Sections 932.7055(3) and (4), F.S.

⁵ Section 932.7055(5), F.S.

Additionally, any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year must expend or donate no less than 15 percent of these proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program. The agency has discretion to determine which program receives the funds.⁶

An agency or organization, other than the seizing agency, that wishes to receive such funds must apply to the sheriff or chief of police for an appropriation. If the agency or organization receives funding under the act, it must provide an accounting, indicating that the funds were only used for the above stated purposes.⁷

If the seizing agency is a local law enforcement agency, the proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.⁸

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except that some agencies have their own forfeiture trust fund, including:

- FDLE;
- Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation;
- Department of Highway Safety and Motor Vehicles;
- Fish and Wildlife Conservation Commission;
- State Attorney Offices;
- School Board Security Agencies;
- State University System Police Departments;
- Department of Agriculture and Consumer Services;
- Department of Military Affairs;
- Medicaid Fraud Control Unit of the Department of Legal Affairs;
- Division of State Fire Marshal of the Department of Financial Services; and
- Division of Insurance Fraud of the Department of Financial Services.⁹

III. Effect of Proposed Changes:

The bill amends s. 932.7055, F.S., by revising the authorized distribution and use of contraband forfeiture funds under the act as follows.

It prohibits a seizing agency from retaining the forfeited property for the agency's use.

It requires the seizing agency to deposit into the Crimes Compensation Trust Fund the forfeiture proceeds which remain after all liens and debts are paid as follows:

⁶ Section 932.7055(5)(c)3., F.S.

⁷ Section 932.7055(5)(c), F.S.

⁸ Section 932.7055(5), F.S.

⁹ Section 932.7055(6), F.S.

- All remaining proceeds, if it is a state agency; or
 - Fifty percent of remaining proceeds, if it is a local law enforcement agency.
- (Currently a seizing agency can retain these proceeds.)

Additionally, the bill provides that the 50 percent of forfeiture proceeds retained by a local law enforcement agency can only be used for school resource officers, crime prevention, safe neighborhood, or drug abuse education and prevention programs. Under the bill, it can no longer be used for other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators, or providing matching funds for federal grants.

The bill requires any local law enforcement agency that acquires at least \$15,000 under the act within a fiscal year to expend or donate 50 percent of the proceeds in excess of \$15,000 for these designated programs (currently a minimum of 15 percent is required). The bill also requires any other agency or organization that requests to receive such funds to provide a detailed accounting, indicating that the funds will only be used for the above stated purposes. The bill states that these requests are public records as defined in ch. 119, F.S.

The bill deletes the current provisions establishing forfeiture trust funds for numerous specified state agencies. It also deletes obsolete language in paragraph (4)(d) of s. 932.7055, F.S.

The effective date of the bill is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of SB 1534, persons who receive funding from the Crimes Compensation Trust Fund may be positively impacted as a result of the bill's mandate that seizing local law enforcement agencies deposit half of the forfeiture funds into that trust fund.

Conversely, the reduction of funds kept by local law enforcement agencies could have a negative impact on organizations that receive grants from local law enforcement agencies.

C. Government Sector Impact:

The bill will reduce by half the amount of funds derived from forfeitures that is currently available to local law enforcement agencies for law enforcement and prevention purposes. These funds may need to be replaced from other sources.

The bill prohibits state agencies from retaining any funds from forfeitures. Currently, designated state agencies (which are listed in the Present Situation section of this analysis and include most agencies that have significant law enforcement responsibilities) keep all forfeited funds. The bill directs that these funds be deposited in the trust fund. Any forfeiture funds acquired by other state agencies are currently deposited into the General Revenue Fund. The bill also directs that these funds be deposited in the trust fund.

The FDLE indicates that it deposits approximately \$2 million of forfeiture funds into its Forfeiture and Investigative Support Trust Fund (FIST) each year. FIST funds are appropriated to the FDLE by the Legislature. Redirection of the funds would require appropriation from another source in order to continue current practices. The FDLE is also concerned that the bill will disqualify state agencies from receiving any federal shared forfeitures because deposit of funds into the Crimes Compensation Trust Fund does not meet federal forfeiture sharing guidelines. The FDLE receives approximately \$1.2 million annually from federal shared forfeitures.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 932.7055 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 381.0081, 895.09, and 932.703.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹⁰ 2015 FDLE Legislative Bill Analysis, SB 1534, March 3, 2015.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
